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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
SCHULTE PROPERTIES LLC,
Debtor.

Case No. 18-12734-mkn

Chapter 11

**SHELLPOINT MORTGAGE
SERVICING'S REPLY TO DEBTOR'S
OPPOSITION TO MOTION FOR
PROTECTIVE ORDER OR, IN THE
ALTERNATIVE, MOTION FOR
MODIFICATION OF SUBPOENA**

Hearing:

Date: July 28, 2021

Time: 9:30 am

Judge: Honorable Mike K. Nakagawa

Courtroom: 2

*Creditor Shellpoint Mortgage Servicing (“Shellpoint”) hereby submits its Reply (“Reply”)
to Debtor’s Opposition to Motion for Protective Order (“Opposition”). (Dkt No. 870).*

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I. RELEVANT FACTS

Shellpoint acquired servicing rights for ten (10) loans (the “Subject Loans”) encumbering the real properties (collectively the “Properties”) described below:

<u>Loan Number</u>	<u>Property</u>	<u>Law Firm</u>
xxxx5888	2614 Sweet Leilani	Aldridge Pite
xxxx3594	5609 San Ardo	ZBS Law
xxxx5845	5709 Ridgetree	Aldridge Pite
xxxx2256	8216 Peaceful Cyn	Aldridge Pite
xxxx6860	956 Ostrich Fern	Aldridge Pite
xxxx4232	1013 Golden Hawk	ZBS Law
xxxx5215	1701 Empire Mine	Aldridge Pite
xxxx6861	1392 Echo Falls	Aldridge Pite
xxxx7197	3729 Discovery Crk	Aldridge Pite
xxxx5214	3383 Cloverdale	Aldridge Pite

On May 10, 2018, Debtor commenced the instant Bankruptcy Case by filing a third voluntary petition under Chapter 11 of the Bankruptcy Code and was assigned case number 18-12734-mkn (the “Bankruptcy Case”).

Shellpoint (or its predecessors in interest) filed Proofs of Claims in the Bankruptcy Case, reflecting the terms of the Confirmed Plan. The Claims included all loan documents and pre-petition payment histories to support the validity and amount of each Claim. To date, the Debtor has yet to object to any of the Claims. The Claims are entitled to a presumption of validity under the Federal Bankruptcy Rules. As a result, the Debtor is already in possession of all loan documents and pre-petition payment histories for the Subject Loans.

On February 27, 2019, Debtor filed its proposed Chapter 11 Plan (“Plan”) and Disclosure Statement. (Dkt Nos. 201-202).

1 Shellpoint (or its predecessors-in-interest) filed multiple *Objections to Confirmation of the*
2 *Plan* (“Plan Objections”). Following hearings on approval of the Disclosure Statement and Plan,
3 the Court authorized the Parties to proceed with discovery.

4 During the discovery period, the Debtor served multiple *Requests for Production of*
5 *Documents* (“Discovery Requests”) on Shellpoint.

6 From January 2020 – June 2020, Shellpoint responded to the Discovery Requests with
7 thousands of pages of documents (“Discovery Responses”).¹ Specifically, Shellpoint provided
8 Debtor with copies of the loan documents, filed claims, filed pleadings, payment histories, monthly
9 statements, escrow statements, and communications with the borrower for each Loan. However,
10 Shellpoint objected to several requests as irrelevant, burdensome, overbroad, vague, proprietary,
11 confidential, or subject to privilege. Debtor failed to meet and confer regarding the Discovery
12 Responses, file a motion to compel seeking additional production, or request a ruling on
13 Shellpoint’s objections to the Discovery Requests. In the meantime, the discovery period expired.
14 (*See Declaration of Eddie Jimenez* (“Declaration”), ¶6-7).

15 On January 5, 2021, the Court entered an [Amended] Order Scheduling Settlement
16 Conference (“Amended Settlement Order”) between the Debtor and Shellpoint. (Dkt No. 790-
17 791).

18 On February 18, 2021, Shellpoint submitted a copy of its revised accounting spreadsheet
19 to the Debtor (“Shellpoint Accounting”) pursuant to the Amended Settlement Order. Notably,
20 Shellpoint’s Accounting reflected all payments received and applied since acquisition of each
21 Subject Loan. Accordingly, the Debtor is already in possession of a detailed accounting for each
22 Subject Loan. (*See Declaration*, ¶9).

23 On May 28, 2021, the Debtor filed a *Notice of Issuance of Subpoena Duces Tecum*
24 (“Subpoena”) requesting production of documents from twenty-seven (27) loan
25 servicers/creditors, including Shellpoint, related to the Debtor’s dozens of real properties. The
26
27

28 ¹ With the exception of the San Ardo Property, Discovery Creek Property, and Peaceful Canyon Property as Shellpoint did not receive Discovery Requests from Debtor.

1 Debtor now seeks blanket, identical, production of all documents as outlined in the Motion. (*See*
2 Subpoena, Exhibits 34-43).

3 Following the issuance of the Subpoena, Aldridge Pite sent a Meet & Confer letter to the
4 Debtor's counsel seeking to resolve the Subpoena, and seeking clarification of any discoverable
5 documents the Debtor believed Shellpoint failed to produce. (*See* Declaration, ¶11).

6 On June 16, 2021, Aldridge Pite sent a **second** follow up letter to the Debtor's counsel
7 seeking to resolve the Subpoena, and seeking clarification of any discoverable documents the
8 Debtor believed Shellpoint failed to produce. Further, Shellpoint requested the withdrawal of the
9 Subpoena.

10 On June 30, 2021, Debtor filed a *Limited Opposition to Motion for Protective Order*
11 (*"Opposition"*). (Dkt No. 870). In the Opposition, Debtor alleged: (i) Debtor is not requesting
12 documents already produced in this matter; (ii) Debtor is only requesting documents, which have
13 yet to be provided or are not accessible by the Debtor; and (iii) Debtor is requesting documents
14 to have a complete loan file to facilitate the filing of claim objections.

15 On July 1, 2021, Aldridge Pite sent a **third** follow up letter to the Debtor's counsel seeking
16 to resolve the Subpoena, and seeking clarification of any discoverable documents the Debtor
17 believed Shellpoint failed to produce. Further, Shellpoint requested the withdrawal of the
18 Subpoena. To date, Debtor has yet to produce Shellpoint with a substantive response. Nor has the
19 Debtor withdrawn the Subpoena.

20 II. REPLY

21 First, Debtor alleges it is not requesting documents already produced, but only requesting
22 documents, which have yet to be produced, or are inaccessible by the Debtor. (*See* Opposition,
23 ¶¶1-2). However, this is untrue. Through the Subpoena, Debtor requests blanket, identical,
24 production of all documents related to the Loan. (*See* Subpoena, Exhibit 95). For instance, Debtor
25 requested copies of the Loan documents, communication(s) with the Borrower, payment histories,
26 and monthly statements sent to the Borrower. Shellpoint asserts said documents were already
27 produced and are equally available to the Debtor. As discussed above, the Parties already engaged
28 in extensive discovery production following the hearing on approval of the Disclosure Statement

1 in 2019. Specifically, Shellpoint responded to multiple Requests for Production of Documents
2 and provided the Debtor with thousands of pages of documents at great time and expense. Further,
3 Shellpoint produced documents to the Debtor during the Judicial Settlement Conference. The
4 Debtor now seeks production of the **same documents**.

5 Second, Debtor failed to articulate with specificity, which documents are missing, or
6 should be produced by Shellpoint (again). It is unreasonable for Shellpoint to reproduce all
7 documents based on the Debtor's failure to keep accurate records or track of documents produced
8 with prior discovery responses. As a result, Shellpoint asserts the documents requested in the
9 Subpoena were either: (i) already produced to the Debtor; (ii) equally available to the Debtor; or
10 (iii) objectionable as outlined in Shellpoint's Discovery Responses to the original production
11 requests and again in the Motion.

12 Third, Debtor asserts it is "requesting documents to have a complete loan file to better
13 respond to objection claims in this matter." (*See* Opposition, ¶3). However, Debtor fails to explain
14 why Shellpoint should be burdened with time and expenses to streamline the Debtor's litigation.
15 Shellpoint already cooperated with prior production requests and should not be forced to incur
16 additional fees and resources every time the Debtor wishes to pursue litigation, and is unable to
17 locate prior records. Again, Debtor failed to explain which documents Shellpoint failed to produce.

18 Fourth, Debtor failed to resolve the discovery dispute in good faith. As outlined above,
19 Shellpoint sent three (3) Meet and Confer Letters to the Debtor's counsel seeking to resolve the
20 Subpoena, and seeking clarification of any discoverable documents the Debtor believed Shellpoint
21 failed to produce. On each occasion, Shellpoint requested the withdrawal of the Subpoena to
22 circumvent the need for Shellpoint incur additional costs associated with responding to the
23 Subpoena and/or seeking a Protective Order. To date, the Debtor has yet to provide a substantive
24 response to Shellpoint explaining which exact documents Debtor alleges Shellpoint failed to
25 produce in prior discovery. Nor has the Debtor withdrawn the Subpoena.

26 Finally, to the extent Shellpoint did not produce a given document during the discovery
27 period, Shellpoint raised appropriate objections in its Discovery Responses as outlined in the
28 Motion.

1 Based on the foregoing, Shellpoint asserts the Court should issue a Protective Order as
2 outlined in the Motion.

3 **WHEREFORE**, Shellpoint respectfully requests:

- 4 1. That the court grant the Motion;
- 5 2. In the alternative, that the Court modify the Subpoena as outlined in the
6 Motion;
- 7 3. Grant Citi its fees and costs associated with responding to the Subpoena,
8 seeking the Protective Order, and prosecuting the present Motion; and
- 9 4. For such other and further relief as this Court deems just and proper.

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11 Respectfully submitted:

12 **ALDRIDGE PITE, LLP**

13 Dated: July 13, 2021

14 /s/ Eddie R. Jimenez
15 EDDIE R. JIMENEZ
16 Attorneys for Shellpoint Mortgage Servicing
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In re

SCHULTE PROPERTIES LLC,

Debtor.

Bankruptcy Case No. 18-12734-mkn
Chapter 11

CERTIFICATE OF SERVICE

I, Lauren Timby declare that:

I am employed by Aldridge Pite, LLP. My business address is: 4375 Jutland Drive, Suite 200; P.O. Box 17933, San Diego, CA 92177-0933. I am over the age of eighteen years and not a party to this cause.

On July 13, 2021, I caused the **REPLY TO DEBTOR'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR MODIFICATION OF SUBPOENA** to be served on the parties listed herein via electronic means through the Court's CM/ECF system or by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail, addressed as follows:

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/s/ Lauren Timby